



# STATE BOARD OF EQUALIZATION

## STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

DRAFT

Date Amended:	<b>As proposed to be amended</b>	Bill No:	<b>AB 737</b>
Tax:	<b>Property</b>	Author:	<b>J. Horton</b>
Related Bills:			

### BILL SUMMARY

This bill would change the allocation of property tax revenues derived from specified electric generation facilities and electrical substation facilities newly constructed by a public utility after January 1, 2006, from the countywide method to the specific tax rate area where the property is located.

### ANALYSIS

#### Current Law

Under current law, incremental growth in property tax revenues from state assessed property occurring after 1987 is shared on a “countywide” basis. The revenue growth could be a result of an increase in property values, new construction or new acquisitions of property. Post-1987 incremental growth revenues are distributed to nearly all governmental agencies and school entities in the county in proportion to each entity’s share of the county’s total ad valorem property tax revenues in the prior year.

Existing law provides a few exceptions to this revenue allocation procedure:

- For three specific state assessed properties newly constructed after 1987, the revenue from the property is allocated only to certain governmental agencies, as specified, in the tax rate area where the property is sited (situs-based) – instead of being shared with all governmental agencies located in the county as incremental growth. *Revenue and Taxation Code §100(i), (j) and (k).*
- Tax revenue from certain state assessed electrical generation facilities that are not owned by a public utility (i.e., “merchant plants”) are allocated only to those governmental agencies and school entities in the tax rate area where the facility is located. *Revenue and Taxation Code §100.9*

#### Proposed Law

As proposed to be amended, this bill would add Section 100.95 to the Revenue and Taxation Code to require the county auditor to allocate property tax revenues from specified public utility owned property newly constructed after January 1, 2006 to those governmental agencies and school entities in the tax rate area where the property is located, as specified.

“Qualified property” means all plant and associated equipment, including substation facilities and fee-owned land and easements, placed in service by the public utility on or after January 1, 2006, and related to the following:

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- Electric generation facilities that have a nameplate generating capacity of 40 megawatts or more.
- Electrical substation facilities that meet either of the following conditions.
  - The high-side voltage of the facility's transformer is 50,000 volts or more.
  - The substation facilities are operated at 50,000 volts or more.

"Qualified property" does not include additions, modifications, reconductoring, or equivalent replacements to the plant and associated equipment made after the plant and associated equipment are placed in service.

With respect to the functions of the Board of Equalization (Board), this bill would require that after the Board annually determines the value of all of the property owned by the public utility, the portion of value that is allocated to the qualified property be assigned to the specific tax rate area where the property is located, rather than assigning it to the countywide tax rate area.

### **In General**

Property tax revenues derived from state assessed property differ from that of locally assessed property:

**Locally Assessed.** Generally, property tax revenues derived from locally assessed property accrue only to those governmental agencies and school entities with jurisdiction in the tax rate area where the property is located (i.e., "situs based").

**State Assessed.** For state assessed property, a certain amount of the incremental growth in revenues after 1987 is placed in a pool and shared with nearly all governmental agencies in a county according to a statutory formula. Specifically,

- Each local agency has a tax base (hereafter called the "unitary base") for any jurisdiction which had state assessed property sited within its boundaries in the 1987-88 fiscal year.
- Thereafter, the formula annually increases each local agency's "unitary base" by two percent (provided revenues are sufficient).
- If there is any property tax revenue remaining after each local agency has been distributed its "unitary base" plus two percent, then this surplus revenue, referred to as "incremental growth," is distributed to all agencies in the county. Agencies with unitary bases also receive a share of the incremental growth.
- "Incremental growth" revenues are shared with all jurisdictions in the county (i.e., countywide distribution) in proportion to the entity's share of total property tax revenues.

Legislation has been enacted to establish situs-based revenue allocations for certain stand-alone state assessed properties that were newly constructed after the countywide system was established. Hence, the property tax revenues derived from these proposed projects (only two of the three projects were subsequently constructed) would go to the jurisdictions in the tax rate area where the project was to be sited rather than being

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shared with all jurisdictions located in the county as “incremental growth.” In addition, there is a fourth exception which applies to a special category of property: state assessed electrical generation facilities that are not owned by a public utility i.e., “merchant plants.”

Revenue allocation procedures for state and local property are summarized in the following table:

Property Type	Revenue Allocation	Revenue and Taxation Code	Legislation
<b>Locally Assessed Property</b>	Situs Based	Section 96 et. seq.	AB 8 (1979)
<b>State Assessed Property –</b> Special exceptions noted below	Pre-1987 values: Situs Based  Incremental Growth: Countywide	Section 100	AB 2890 (1986)
Merchant Power Plants  Location: Statewide	Situs Based	Section 100.9	AB 81 (2002)
Pacific Bell (Computer Center)  Location: City of Fairfield	Situs Based – as specified	Section 100(i)	AB 454 (1987)
PG&E (Education and Training Center)  Location: City of Livermore	Situs Based – as specified	Section 100(j)	SB 53 (1991)
SDG&E (Power Plant -Never Constructed)  Location: City of Chula Vista	Situs Based – as specified	Section 100(k)	AB 1108 (1993)
SDG&E (Power Plant - Under Construction)  Location: City of Escondido	Situs Based – as specified	Section 100(k)	AB 2558 (2004)

**The historical rationale for the countywide system.** The countywide system was established to ease the administrative burdens on state assessees, the state, and counties. Detailed record keeping was necessary to report property holdings, allocate property value, and allocate property tax revenue by the fine detail of the tax rate area.

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According to a news release on 1986's AB 2890 (Hannigan), the bill that created the countywide system, the Assembly Revenue and Taxation Committee had held an interim hearing in the fall of 1985 on property tax issues resulting in a number of suggested reforms subsequently included in AB 2890. The press release summarizes the various reforms and with respect to the new revenue allocation system, it describes the proposed new system as follows:

**Distribute the value of state assessed property to counties on a countywide basis, and distribute the revenue to local jurisdictions in proportion to their local assessed value.**

Rationale: This will eliminate a very burdensome administrative job for the Board of Equalization and for taxpayers – the placing of state assessed value into tax rate areas. No jurisdiction will lose any money because the AB 8 distribution formula (and the specific provisions of this legislation) will guarantee all taxing jurisdictions that they will get the same amount of revenue that they got in the prior year from state assessees plus an amount for growth.

In 1987, an Assembly Revenue and Taxation Committee analysis on a related measure, AB 454, provided additional insight into the rationale for establishing the countywide system. That analysis notes:

In AB 2890 (Hannigan) of 1986, a formula distribution of state assessed unitary values was adopted. The justification for this provision were (1) that state assessed unitary property is assessed on a company basis, not on a location basis, and a situs allocation is not consistent with the theory and practice with state assessed valuation procedures and (2) that the attempt to break apart a unitary assessment for the purpose of a situs assessment was causing taxpayers and the State to spend hundreds of thousands of dollars for a bureaucratic purpose that provided no social purpose other than to provide jobs to those doing the work.

### **Background**

Section 19 of Article XIII of the California Constitution provides that “[t]he Board shall annually assess \* \* \* property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity.” Differences in opinion have been expressed as to whether this means that the assessment jurisdiction of the Board extends to any company that transmits or sells electricity or only “regulated” companies. Any property subject to property tax that is not within the Board’s jurisdiction, or where the Board declines to assert jurisdiction, is subject to property tax assessment by the local county assessor.

**Deregulation.** As a result of electrical deregulation, 22 electrical generation facilities previously owned by public utilities were sold to private companies. As an additional consequence of deregulation, it was anticipated that non-public utility companies would construct future generation facilities. Because of these developments, the Board decided to examine the question of the boundaries of its assessment jurisdiction over companies selling electricity in a post-deregulation era.

Prior to deregulation, local county assessors assessed all electrical generation facilities except those owned by the regulated public utilities. This generally included co-

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generation facilities and facilities using renewable sources of energy such as wind or solar. Immediately after deregulation, county assessors additionally assumed the assessment of power plants divested by regulated public utilities as well as newly constructed power plants built by private companies post-deregulation. The transfer of assessment jurisdiction of divested plants was a result of a Board regulation, Rule 905. However, beginning in 2003, the Board amended this regulation to reassert its jurisdiction over divested electrical generation facilities and certain newly constructed facilities. The Board maintained and continues to assess, those generation facilities owned by public utilities, which are primarily hydroelectric and nuclear facilities.

**Revenue Allocation and Property Tax Rule 905.** A significant issue raised by interested parties in the hearings on Rule 905 was the revenue allocation consequences of state vs. local assessment of electrical generation facilities. Many local jurisdictions made decisions to approve the construction of new facilities in their communities based in part on the expected property tax revenues. Under local assessment, revenue allocation was situs based. A transition to state assessment (and by default to countywide distribution) would significantly diminish the revenue proceeds from these properties. To address this concern, AB 81 (Ch. 57, Stats. 2002) changed the revenue allocation of these divested and newly constructed facilities to provide for situs based revenue allocation under state assessment. Thus, the revenue from newly constructed and repowered plants remained situs based after the Board reasserted its jurisdiction over these properties.

## COMMENTS

1. **Sponsor and purpose.** Southern California Edison is sponsoring this bill to provide a financial incentive for cities and counties to support locating these electrical generation facilities and substations within their boundaries.
2. **The allocation of property tax revenues from state-assessed power plants differ depending upon whether they are owned by a merchant power provider or a public utility:**
  - **Merchant Plants.** Pursuant to Revenue and Taxation Code Section 100.9, beginning in 2003-04, the revenue from state assessed electrical generation facilities are allocated only to the governmental agencies and school entities in the tax rate area where the property is located (situs based).
  - **Public Utility Owned Power Plants.** Any increase in property tax revenue associated with the construction or acquisition of a new power plant if owned by a public utility is treated as incremental growth and shared countywide (except for the power plant to be constructed in the City of Escondido, an exception created last year by AB 2558).
3. **Since deregulation, tax revenues from newly constructed power plants in California have been allocated on a situs basis.** This bill is consistent with the revenue allocation procedures for divested power plants and newly constructed power plants since the restructuring of the electric utility industry in California. Many local jurisdictions made decisions to host the construction of new power plants based in part on expected property tax revenues. From 1999 through 2003, situs based revenue allocation occurred by default since these properties were locally assessed. After these plants were transferred to state assessment, legislation was enacted to continue situs based revenue allocation.

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**COST ESTIMATE**

The Board would incur insignificant costs (less than \$10,000) in making the special assessment allocation procedures.

**REVENUE ESTIMATE**

This bill would not substantively change the amount of property tax revenue ultimately derived from these properties. Rather, it changes the distribution of those property tax revenues. Property tax revenue allocation is a zero sum game creating winners and losers among the local governments and school entities in the county

The Board does not have data on the distribution of revenues from state assessed values allocated to local governments and school entities from the countywide pool. Such detail could be obtained from the local county auditor, provided that the exact location of the future new construction is known. To determine which local governments and school entities would be winners and which would be losers, one must compare the allocation of revenues from the countywide pool for the particular county where the property is located to the allocation of revenues for the specific tax rate area where the property is located within that county.

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	05/11/05
Contact:	Margaret S. Shedd	916-322-2376	
mcc			0737-1rk.doc